IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

FAO.No. 41 of 2007()

AGAINST THE ORDER IN IA 859/06 IN
OS.153/2005 of SUB COURT,KATTAPPANA
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APPELLANT/PETITIONER IN IA/PLAINTIFF:

MAILAMATTOM MOTOR FINANCIERS,
REPRESENTED BY ITS PROPRIETOR,
SRI.M.D.BAIJU, S/O.DAMODARAN, MAILAMATTOM
HOUSE, VAZHAPPALLY KARA, VAZHAPPALLY EAST
VILLAGE, CHANGANACHERRY TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.K. JAYAKUMAR
ADV. SRI.P.B.KRISHNAN

RESPONDENTS/RESPONDENTS IN I.A/DEFENDANTS:
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1. CARDAMOM MARKETING CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
R.KRISHNASWAMY, S/O.R.RAMASWAMY GOWDER,
NATTUKAL STREET, CAMBUS, THENI DISTRICT,
TAMIL NADU.

2. MATHEW SCARIA, POTTAMKULAM HOUSE, VANDANMEDU, TREASURER, CARDAMOM MARKETING CORPORATION, VANDANMEDU.

3. GEORGE JOSEPH, S/O.JACOB JOSEPH, KOKKAPPALLIL HOUSE, CHEMPALAM, DIRECTOR, CARDAMOM MARKETING CORPORATION, VANDANMEDU.

4. DEVASSIA @ RAJU, VECHOORETTU HOUSE, DIRECTOR, CARDAMOM MARKETING CORPORATION, VANDANMEDU.

5. T.MUTHUKRISHNAN, S/O.M.K.T.S. APPACHIPILLAI, DIRECTOR, CARDAMOM MARKETING CORPORATION, VANDANMEDU.

6. ULAKANATHAN, S/O.KRISHNASWAMY GOWDER, NATTUKAL STREET, CUMBUM, THENI DISTRICT, TAMILNADU.

7. RAMACHANDRAN NAIR, ANANDA NILAYAM, VANDANMEDU, MANAGER, CARDAMOM MARKETING CORPORATION, VANDANMEDU.

8. S.V.SUBRAMANIAN, S/O.S.VELUCHAMY CHETTIAR, RESIDING AT NO.22/46, PERIYANDAVAR HIGH ROAD, GANDHINAGAR, BODINAYKANNUR.

9. G.VIJAYAKUMAR, S/O.V.GANASHEKARAN, RESIDING AT NO.11/10, RANIMANGAMMAL STREET, KUPPINAYANAKANPATTY, BODINAYKANUR.

10. S.GANAVEL, S/O.S.V.SUBRAMANIAN, RESIDING AT NO.22/46, PERIYANDAVAR HIGH ROAD, GANDHINAGAR, BODINAYKANUR.

11. S.AMBIKAVATHY, W/O.S.V.SUBRAMANIAN,
RESIDING AT NO.4/55A, AYYAN STREET,
GANDHINAGAR, BODINAYKANUR.

12. V.KARTHIKA, W/O.VIJAYAKUMAR,
RESIDING AT NO.11/10, RANIMANGAMMAL STREET,
KUPPINAYANAKANPATTY, BODINAYKANUR.

BY ADV. GEORGE THOMAS MEVADA (CAVEATOR)
RI. TO R3 BY ADV. SHRI GEORGE THOMAS.
R7 BY ADV. SHRI K.K. .CHANDRAN PILLAI
R8 TO R12 BY ADV. SHRI MATHEW JOHN.(K)
SRI.R.V.SATHYAPRIYAN NAIR
SRI.SUJESH MENON V.B.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

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F.A.O. No. 41 OF 2007

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Dated this the 14th March, 2007

J U D G M E N T

Sankaran, J:

This appeal is filed by the plaintiff in O.S. 153 of 2005 on the file of the Sub Court, Kattappana challenging the order in I.A.No. 859 of 2006 by which the prayer to appoint a Receiver in respect of the property attached before the judgment, was rejected by the court .

2. Appellant herein filed the suit against respondents Nos. 1 to 6 for realization of an amount of Rs. 68,64,690/- . On an application filed by the plaintiff, an extent of 73 acres of Cardamom estate belonging to defendant No.1 was attached before the judgment. The order of attachment was effected on 18.11.2005. Amin, who effected attachment submitted his report with regard to attachment on 21.11.2005. Defendant No.1 assigned the attached property to defendants Nos. 8 to 12 on 09.03.2006 in violation of the order of attachment . Normally, document transferring such property would have been registered before the Sub Registrar's office, Kattappana. The allegation raised by the appellant is

that to avoid registration of the document before the Sub Registrar Office, Kattappana, defendant No. 1 purchased an extent of 2.21 ½ acres of land on 08.03.2006 and got that document registered before the Sub Registrar Office, Rajakumari and on the next day,viz. 09.03.2006, not only the attached property but also the aforesaid property having an extent of 2.21 ½ acres were sold to the defendants Nos. 8 to 12. According to the appellant, such a course was adopted by the defendants Nos. 1 to 4 to make it appear that they have not transferred the property. The sale consideration shown in the document is Rs.1,18,05,840/- It is recited that an amount of Rs.70,00,000/- is reserved with the purchasers to cover the liability towards plaint claim. It is also stated that Rs. 45,55,500/- is reserved for payment to the Housing Development Finance Corporation and that a sum of Rs. 3,00,000/- was paid in cash to defendant No. 1.

3. The court below dismissed the application for appointing a Receiver on the ground that it is not just and proper and it would not be in the interest of justice to appoint a Receiver in respect of the Cardamom estate having an extent of 73 acres. The court below also thought since

provision has already been made in the document to cover the plaint claim, it is not just in allowing the petition to appoint a Receiver. Learned counsel for the appellant submitted that the court below was not justified in dismissing the application .

4. After having heard the counsel appearing for all the parties at length, a consensus is arrived at. It is suggested that instead of appointing a Receiver, it is sufficient if 73 acres of Cardamom estate which is purportedly transferred to defendants Nos. 8 to 12 shall be given as security for the plaint claim and that the order of attachment will continue to be in force. The appellant as well as other parties agree to this suggestion on the basis of the consensus arrived at . Accordingly, F.A.O. is disposed of in the following manner:

The order passed by the court below is set aside. Defendants Nos. 8 to 12 shall execute a bond before the court below furnishing 73 acres of Cardamom estate which is purportedly transferred in their favour, as security for the plaint claim. Defendants Nos. 8 to 12 shall undertake not to

transfer, alienate or encumber the property till the disposal of the suit. Defendants Nos. 8 to 12 shall not cut and remove trees or remove any other valuable improvements from the property without seeking permission of the court. The order of attachment will continue to be in force. The trial court shall dispose of the suit as expeditiously as possible, not later than a period of six months from the date of production of a copy of this judgment. It is submitted by the counsel appearing for the parties that the parties will co-operate with the trial court for the early disposal of the suit.

F.A.O. is disposed of as above.

KURIAN JOSEPH,
JUDGE.

K.T. SANKARAN,
JUDGE.

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